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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,868	01/22/2004	Edward Eytchison	Sony-05300	8511
7590 07/29/2010				
JONATHAN O OWENS HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			EXAMINER CLOUD, JOIYA M	
			ART UNIT 2444	PAPER NUMBER
			MAIL DATE 07/20/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/763,868

Applicant(s)

EYTCHEISON ET AL.

Examiner

Joiya M. Cloud

Art Unit

2444

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 02/15/2010, 06/03/2010 and 07/15/2010.

DETAILED ACTION

This action is responsive to communication filed 04/22/2010. Claims 1-27 are pending. Applicant's arguments filed 04/22/2010 have been fully considered but are not persuasive.

Response to Arguments

A) "Within the Advisory Action, there appears to be a misunderstanding of the Applicant's arguments...The argument being made in the previous response was that Loomis does not teach "pre-fetching a first portion of the song, *subsequently stream the entire song*..."

As to the above point A), Examiner respectfully disagrees. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "pre-fetching a first portion of the song *subsequently stream the entire song*...") are not specifically recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). No where does the instant claim mention pre-fetching. Likewise, *streaming an entire song* is not required by the instant claim language. Rather, the recites "seamlessly transitioning...to an entire segment of the content item. Loomis very clearly teaches receiving from a buffer a portion (the first few seconds of the song) of the content item (i.e. song) and seamlessly transitioning from the initial portion to an entire segment of the content item (the entire segment of the song being the rest of the song) See, paragraphs [0067]-[0069]. Applicant also suggests that Loomis does not teach that the pre-buffered portion is pre-fetched and later streamed, and that the *entire song*, not just the remaining portion of the song, is *later* streamed to

the buffer. However, there is not indication of *when* or a time indicating when streams or content items are being streamed, required by the claim. Likewise, the claim does not mention later streaming the entire song. Examiner strongly encourages Applicant's to amend the claim language to recite intended claimed invention.

B) "Loomis does not teach a stream synchronizer that received a first data stream comprising a pre-buffered portion of the song received from a temporary storage cache and a second data stream comprising an entire segment of the song streamed from a stream buffer."

As to the above point B), Examiner respectfully disagrees. First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a stream synchronizer that received a first data stream comprising a pre-buffered portion of the song received from a temporary storage cache and a second data stream comprising an entire segment of the song streamed from a stream buffer.) are not specifically recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). For instance, nowhere does the instant claim recite a "first data stream" or a "second data stream." Rather, only a resultant stream exists that uses the initial portion of the content item, see exemplary claim 1 recites *"streaming the initial portion of the content item from the temporary storage cache to a stream synchronizer in response to the request; producing a resultant stream using the initial portion of the content item..."* Likewise, there is no mention of "a first data stream comprising a pre-buffered portion of the song." Applicant's are advised to incorporate such language into the

claim to clearly define Applicant's intended invention. Second, Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. The present arguments are unclear as to how the instant claim overcome the prior art of record.

As to the above limitation of claim 1, Examiner reiterates previous arguments regarding a stream synchronizer. Examiner submits that there is no requirement as to what constitutes "a stream synchronizer." As recognized by a person of ordinary skill in the art, "a stream synchronizer" can refer to the stream component itself that is streaming the media content (**See paragraph [0020] and [0021] of Loomis**). In paragraphs [0022] and [0023], clearly discloses a piledriver which performs stream synchronization. Accordingly, Applicant should also amend the claim to clearly reflect what is meant by the term "stream synchronizer," if the meaning is other than the above mentioned. Refer also to argument A above and paragraphs [0067]-[0069] where Loomis clearly discloses "streaming the initial portion of the content item from the temporary storage cache to a stream synchronizer in response to the request; producing a resultant stream using the initial portion of the content item..."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-27 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Loomis (US Publication No. 20060155400 A1)**

As per claim 1, Loomis teaches a method comprising: identifying a preference (**a user pre-selects preferred songs for a user playlist, paragraph [0041]**); selecting a content item based on the preference (**the first song of the playlist is selected, paragraph [0041]**); storing an initial portion of the content item in a temporary storage cache (**Figure 3A, where X seconds of five pre-buffered songs are stored for playing. See also paragraphs [0007], [0060], and [0061], where a pre-cache stores a small portion in a buffer and [0022], a local cache of the first ten seconds of a content item**); receiving a request for the content item (**paragraph [0043], where a user requests a next song to play**); streaming the initial portion of the content item from the temporary storage cache to a stream synchronizer (**i.e. pile driver**) in response to the request (**paragraph [0068]**); producing a resultant stream using the initial portion of the content item (**paragraph [0068]**); and seamlessly transitioning the resultant stream from the initial portion of the content item to an entire segment of the content item (**Abstract and paragraphs [0007] and [0068]**).

As per claim 2, Loomis teaches a method wherein the preference is associated with a user (**paragraph [0041]**).

As per claim 3, Loomis teaches a method wherein the preference includes a playlist **(Figure 1A, playlist)**.

As per claim 4, Loomis teaches a method wherein the resultant stream mirrors the entire segment of the content **(paragraph [0007])**.

As per claim 5, Loomis teaches a method further comprising identifying a user associated with the preference **(paragraph [0041])**.

As per claim 6, Loomis teaches a method wherein the content includes one of a document, an image, audio data, and video data **(Abstract, audio data -song)**.

As per claim 7, Loomis teaches a method further comprising transmitting the entire segment of the content to a stream buffer in response to the request **(paragraph [0068])**.

As per claim 8, Loomis teaches a method wherein the transmitting the entire segment of the content occurs simultaneously with streaming the initial portion **(paragraph [0007])**.

As per claim 9, Loomis teaches a method wherein the seamlessly transitioning occurs in real-time **(paragraph [0021])**.

As per claim 10, Loomis teaches a method further comprising presenting the resultant stream beginning with the initial portion and subsequently followed by a portion of the entire segment **(Abstract and paragraphs [0007] and [0068])**.

As per claim 11, claim 11 recites substantially the same limitations as claim 1. Therefore, the rejection for claim 1 applies equally as well to claim 11.

As per claim 12, Loomis teaches storing an initial portion of a selected content item in a temporary storage cache; streaming the initial portion of the selected content item from the temporary storage cache to a stream synchronizer (**paragraph []**); simultaneously loading an entire segment of the selected content item to the stream synchronizer while streaming the initial portion (**paragraphs [0068] and [0007]**); producing a resultant stream comprising the initial portion of the selected content item (**paragraphs [0068] and [0007]**); and seamlessly transitioning the resultant stream from the initial portion of the content item to the entire segment of the content item (**paragraphs [0068] and [0007]**).

As per claims 13-17, the rejection for claims 1, 6, and 9 applies fully.

As per claim 18, Loomis teaches a method further comprising displaying the resultant stream (**paragraph [0048], Figure 2**).

As per claim 19, claim 19 is substantially the same as claim 1, but in system form rather than method form. Therefore, the rejection for claim 1 applies equally as well to claim 19.

As per claim 20, claim 20 is substantially the same as claim 1, but in system rather than method form. Therefore, the rejection for claim 1 applies equally to claim 20.

As per claim 21, Loomis teaches a system wherein the client device is configured to store the initial portion of the content prior to a request for the content (**paragraphs [0060] and [0061]**).

As per claim 22, Loomis teaches a system wherein the client device is configured to receive the entire segment subsequent to a request for the content (**Abstract and paragraphs [0007] and [0068]**).

As per claim 23, Loomis teaches system wherein the client device further comprises a preference data module configured for storing information relating to the content (**paragraph [0034]**).

As per claims 24-26, the rejection for claims 1 and 6-7 applies fully.

As per claim 27, Loomis teaches identifying a preference; selecting a content item based on the preference, wherein the content item is a data file having a defined beginning point and ending point (**paragraph [0034]**); prefetching an initial portion of the content item (**paragraph [0007]**); storing the initial portion of the content item in the temporary storage cache (**paragraph [0022], local caching of the first ten seconds**); receiving a request for the content item (**paragraph [0043], where a user requests a next song to play**); streaming the initial portion of the content item from the temporary storage cache to a stream synchronizer in response to the request (**paragraph [0068]**); producing a resultant stream using the initial portion of the content item (**paragraph [0068]**) ; and seamlessly transitioning the resultant stream from the initial portion of the content item to an entire segment of the content item before the initial portion ends (**paragraphs [0007] and [0068]**).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joiya Cloud whose telephone number is 571-270-1146. The

examiner can normally be reached Monday to Friday from on 7:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-3922. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMC

July 15, 2010
/William C. Vaughn, Jr./

Art Unit 2444

Supervisory Patent Examiner, Art Unit 2444